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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

H2

FEB 11 2004

FILE:

Office: NEW DELHI, INDIA

Date:

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud and willful misrepresentation of a material fact in 1991. The applicant is a derivative beneficiary of an approved Petition for Alien Relative filed on behalf of his spouse by her sibling. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with his Lawful Permanent Resident (LPR) spouse and children.

The Officer in Charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. See *Officer in Charge Decision* dated June 25, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

The record clearly reflects that in 1991 the applicant knowingly used a passport that did not belong to him in order to gain admission into the United States by fraud and willful misrepresentation of a material fact. The applicant admitted that he paid \$2,500 to an Indian agent to obtain the passport and escort him to the United States. After he was admitted in the United States, as an impostor, he purchased an I-551 in order to remain and work in the United States. The applicant further stated that he applied for asylum in the United States although he had no fear of returning to India.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his IPR spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, "CIS") failed to correctly assess extreme hardship to the applicant's spouse (Ms. [redacted]) and his children. In support of this assertion, counsel submitted a brief and affidavits from family members and friends who know both the applicant and his spouse. In the brief counsel states that Ms. Patel would suffer emotionally and financially if her spouse's waiver application was not approved. The affidavits state general hardship that would be imposed on Ms. [redacted] if her spouse was not allowed to enter the country. In the brief it is stated that Ms. [redacted] may be forced to leave the United States and relocate with her children in India. In addition it is stated that the lack of adequate educational opportunities and insufficient medical facilities for the applicant's children would impose hardship to Ms. [redacted]. In the present case the record reflects that Ms. [redacted] is a native of India and that she met and married her husband in India. No reason was provided, other than general country conditions and the opportunity for educational opportunities in the United States for her children as to why she would not be able to return to India and obtain gainful employment if she decides to return to India.

There are no laws that require her to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. See *Shooshtary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

Counsel presented a December 26, 2000 letter from a physician that states that Ms. [redacted] suffers from a mental illness, known as Major Depression, recurrent. The physician who signed the letter did not indicate his qualifications to make that determination and further, it was based on a single visit with Ms. [redacted]. No additional detail of the type of treatment, if any, she is receiving was provided. The record contains no evidence to indicate that adequate health maintenance and follow-up care and medication are unavailable in India.

Counsel asserts that the hardship caused to the applicant's spouse as a result of her children's distress due to their separation from their father should be considered. In the affidavit submitted by Ms. [redacted] and the children's teachers it is stated that they are well adjusted, they participate in community activities and they have had a smooth transition to the United States and to the school system. Extreme hardship has not been shown to the applicant's spouse based on her children's separation from their father.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (RIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In his brief counsel asserts that the Officer in Charge made a determination that the applicant "has shown no remorse and no rehabilitation," without describing how she arrived at this conclusion. The Officer in Charge clearly states in her decision that "...the applicant has continually refused to be truthful or cooperative with officials." During his immigration visa interview at the American Consulate General in Mumbai, India the applicant was given the opportunity to explain his presence in the United States since 1991, but continued to deny any travel to the United States until he was presented with documentary evidence, and even then, denied any of his wrongdoings and changed his story throughout the interview.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his LPR spouse would suffer extreme hardship if he were not permitted to enter the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.